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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,320	08/28/2003	Thomas M. McCormick	CH2M.44	7807
25871	7590	05/04/2005	EXAMINER	
SWANSON & BRATSCHUN L.L.C. 1745 SHEA CENTER DRIVE SUITE 330 HIGHLANDS RANCH, CO 80129			SINGH, SUNIL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/651,320

Applicant(s)

MCCORMICK ET AL.

Examiner

Sunil Singh

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-17 is/are allowed.
- 6) ☐ Claim(s) 1-5, 9, 18-22 and 24-29 is/are rejected.
- 7) ☐ Claim(s) 6-8 and 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,4,9,18-21, 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Iacocca et al. (US 5120164).

Iacocca et al. disclose a bedding for a utility line (28) comprising: an elongate trench formed in the earth (see col. 3 lines 30+, Fig. 5); a filter fabric wrap (27) lining a lengthwise segment of the trench having a select length; a first select depth of porous particulate material resting on a trench bottom underlying a utility line and supporting the utility line in the lengthwise segment; and a second select depth of porous particulate material overlying the utility pipe in the lengthwise segment; the select length of the lengthwise segment, the first select depth and the second select depth being selected to store a select volume of water.

3. Claims 1-4,9,18-21, 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Repka (US 5495696).

Repka discloses a bedding for a utility line (5) comprising: an elongate trench formed in the earth (see Fig. 1); a filter fabric wrap (4) lining a lengthwise segment of the trench having a select length; a first select depth of porous particulate material (3)

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resting on a trench bottom underlying a utility line and supporting the utility line in the lengthwise segment; and a second select depth of porous particulate material (3) overlying the utility pipe in the lengthwise segment; the select length of the lengthwise segment, the first select depth and the second select depth being selected to store a select volume of water. Drainage well (18). Conduit (2) providing communication with source of water (surface water from rainfall) to the trench.

4. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Blume (US 5316410).

Blume discloses a bedding for a utility line comprising: an elongate trench formed in the earth; a first depth of porous particulate material underlying a non-perforated utility line (4) and supporting the non-perforated utility line along a lengthwise segment of the trench having a select length, a second (5) depth of porous particulate material overlying the non-perforated utility line along the lengthwise segment; the select length of the lengthwise segment, the first select depth, the second select depth and a width of the lengthwise segment being selected to store a select volume of water; and a drainage pipe (3) within the porous particulate material in the lengthwise segment, the drainage pipe being in liquid communication with a source of water (this is considered the surface run-off from rain etc.).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 4-5, 9, 18-22, 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blume (US 5316410) in view of Repka or Iacocca et al.

Blume discloses a bedding for a utility line comprising: an elongate trench formed in the earth (see Fig. 2), a first select depth of porous particulate material resting on a trench bottom underlying a non-perforated utility line (4) and supporting the non-perforated utility line in the lengthwise segment; and a second (5) select depth of porous particulate material overlying the non-perforated utility line in the lengthwise segment; the select length of the lengthwise segment, the first select depth and the second select depth being selected to store a select volume of water. (Re claims 4,5), the conduit is considered as earth portion above perforated pipe (3). (Re claim 9) gravel (5). Blume discloses the invention substantially as claimed. However, Blume lacks a filter fabric lining the trench. Repka and Iacocca et al. both teach a filter fabric (4 , 27) lining a trench. It would have been considered obvious to one of ordinary skill in the art to modify Blume to include the filter fabric as taught by either Repka or Iacocca et al. since this would prevent fine particles from clogging the drainage system.

Allowable Subject Matter

7. Claims 11-17 are allowed.

8. Claims 6-8 and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments filed 3/21/05 have been fully considered but they are not persuasive. Applicant argues that Iacocca element (28) and Repka element (5) are not utility lines as defined in the specification and as understood by one of ordinary skill in the art but are drain tiles configured to receive water from a surrounding gravel bed for conveying water away from the gravel bed. This examiner respectfully disagrees with such statement. Applicant describes the "utility line" to encompass lines to expand water, sanitary sewer lines, gas lines, cable lines, telephone lines, electrical lines **or the like**. As evidenced by patents dating back to the 1960's and 1970's, the term "utility line" also encompasses "drain tile" See patents (US 3188694, col. 2 line 5+; US 3374593, col. 1 line 65+; US 3623296 col. 2 line 34+; US 3816931 col. 1 line 30+). Therefore, applicant's statement that "drain tile" is not a "utility line" is clearly not correct. Applicant argues that the term "utility lines" is not intended to be so broad as to relate to any type of line that has utility rather to mean a line deployed by a utility (a.k.a. a public utility) to provide a public service such as potable water, sewerage, gas, electricity and telephone. It is the examiner's position that if applicant does not intend for the term "utility line" to be given the broadest reasonable interpretation then applicant needs to limit the claims to preclude such reasonable interpretation. It is noted that applicant cited several definition of what "utility line" is defined as; however, as evidenced by the above cited patents; it is clear that the accepted term in the art for "utility line" encompasses "drain tiles".

Applicant's arguments with respect to claim 29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh
Primary Examiner
Art Unit 3673



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4/30/05

SUNIL SINGH
PRIMARY PATENT EXAMINER